

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *
*
* * * * *

Transcript of proceedings before The
Honorable Richard J. Ganucheau, Judge Pro Tempore,
Civil District Court, Parish of Orleans, State of
Louisiana, 421 Loyola Avenue, New Orleans, Louisiana
70112, commencing on June 18, 2001.

* * * * *
Tuesday
February 18, 2003
1:31 p.m.
* * * * *

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14046

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14047

1 I N D E X

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4 WITNESS: PAGE
5 ALEXANDER WHITE SPEARS, III..... 14048
(Examination by videotaped deposition)

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14048

1 P R O C E E D I N G S
2 (Jury seated.)
3 THE LAW CLERK:
4 Recess is over. Court will come to
5 order.
6 THE COURT:
7 Please be seated.
8 MR. REDFEARN:
9 Hi, Your Honor. We're ready to proceed,
10 if you wish, with the deposition of Alexander
11 Spears.
12 THE COURT:
13 Yes, proceed.
14 MR. REDFEARN:
15 Good afternoon, everyone. Today, I'm

16 going to present the deposition of Dr.
17 Alexander Spears taken in November of 2000 --
18 deposition taken in November of 2000, the CEO
19 of Lorillard Tobacco Company.

20 Carl, whenever you're ready.

21 (Videotaped sworn deposition of
22 ALEXANDER WHITE SPEARS, III is played as
23 follows:)

24 QUESTION: Would you please state your
25 name for the jury, please?

26 ANSWER: Alexander White Spears, III.

27 QUESTION: Dr. Spears, let me start off
28 by asking you, what is your present title or
29 position with Lorillard Tobacco Company?

30 ANSWER: My position is chairman of the
31 board.

32 QUESTION: And do you have any position
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14049

1 with Lorillard, Inc.?

2 ANSWER: I do not.

3 QUESTION: All right. And Lorillard,
4 Inc. is the parent company of Lorillard
5 Tobacco Company?

6 ANSWER: That is correct.

7 QUESTION: All right. Dr. Spears, when
8 did you first join Lorillard Tobacco Company
9 or any predecessor?

10 ANSWER: Its predecessor, in 1959.

11 QUESTION: All right. And what was its
12 predecessor's name at that time?

13 ANSWER: P. Lorillard Tobacco Company.

14 QUESTION: Okay. Now, since 1959, have
15 you been employed continually by Lorillard
16 Tobacco Company or one of its predecessors
17 through today?

18 ANSWER: I have.

19 QUESTION: All right. Would you
20 generally give us the job descriptions you've
21 held since 1959 through today?

22 ANSWER: My first job was -- title was
23 research associate. Do you want the dates
24 approximately?

25 QUESTION: I'm just looking for a general
26 run-through of your work history. If you can
27 remember the dates, that's fine. If not,
28 that's fine, too.

29 ANSWER: All right. The next title, I
30 believe, was senior research chemist.

31 And then in the mid-'650s, I became
32 director of basic research.

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14050

1 In 1967, director of research and
2 development.

3 1970, vice president for research and
4 development.

5 And about '73 or '74, I became senior
6 vice president for operations and research.

7 Later in the '70S, early '80s, became
8 executive vice president for operations and

9 research.

10 And then in the '80s, I became -- or
11 maybe it was in the early '90s, vice-chairman and
12 chief operating officer.

13 And about '95, I became chairman and
14 chief executive officer.

15 And then in January of '99, I became
16 vice -- or just chairman.

17 QUESTION: Lorillard Tobacco Company.
18 Can you identify the current brands
19 manufactured by Lorillard Tobacco Company
20 today?

21 ANSWER: I think I can.

22 QUESTION: Would you please do it?

23 ANSWER: Newport, Kent, Old Gold, True,
24 Maverick, Max. I think there's one other
25 minor brand that I'm missing, but I think
26 that's essentially all of them.

27 QUESTION: Are these cigarette brands
28 sold in Louisiana currently amongst other
29 states?

30 ANSWER: Yes, they are.

31 QUESTION: Dr. Spears, I'm going to ask
32 you, as a manufacturer of cigarettes, do you
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14051

1 agree that Lorillard has -- Lorillard has a
2 duty to investigate and learn everything it
3 can about its products?

4 ANSWER: Yes, Lorillard has, over the
5 years, investigated a lot of time and effort
6 into learning about its product.

7 QUESTION: All right. Well, do you agree
8 that that duty includes learning whether or
9 not the cigarette or any of its component or
10 constituent parts might be harmful to people?

11 ANSWER: That would be part of the
12 activity, yes.

13 QUESTION: All right. And, in fact, are
14 you aware that Lorillard has made public
15 statements to the effect that it is
16 attempting to learn the truth about the
17 relationship between smoking and health?

18 ANSWER: I'm aware of that statement. I
19 don't think it was uniquely to Lorillard,
20 but, yes, I'm aware of that statement.

21 QUESTION: All right. Let me hand you
22 Scott Exhibit 2778. Ask you to take a look
23 at that for a second. Let me know when
24 you're through looking at it, Doctor.

25 ANSWER: Yes, I've look at it.

26 QUESTION: Look at the -- well, let me
27 first ask you, this is a letter written by H.
28 B. Parmele, and I realize it was dated
29 February 22nd, 1955, a little bit before your
30 time, but can you identify Dr. Parmele?

31 ANSWER: Yes, he was vice president for
32 research -- no, he was director for research
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14052

1 at that time.

2 QUESTION: Did -- at some point in time
3 when you joined Lorillard, did you report
4 directly to Dr. Parmele?
5 ANSWER: No, I did not.
6 QUESTION: But you worked directly
7 underneath him?
8 ANSWER: Yes.
9 QUESTION: The letter states in the
10 second paragraph, "The Tobacco Industry
11 Research Committee of which the P. Lorillard
12 company is a member, is sponsoring research
13 on a very broad front with respect to the
14 usage of tobacco and its effect on all phases
15 of human health."
16 What is the Tobacco Research Committee?
17 ANSWER: It was an organization formed by
18 the major tobacco companies. I think the
19 date was about 1952 or 3. And its purpose
20 was to award grants to investigators for the
21 purpose of conducting research on those
22 diseases that were associated with smoking.
23 QUESTION: Was its name later changed to
24 CTR?
25 ANSWER: Yes, it was.
26 QUESTION: And what do the initials CTR
27 stand for?
28 ANSWER: Council for Tobacco Research.
29 QUESTION: I want to talk to you about
30 the Research Department at Lorillard. Is
31 there a particular group or department within
32 the Research Department which focuses solely
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14053
1 on the relationship between smoking and
2 health?
3 ANSWER: No, there is not a specific
4 department.
5 QUESTION: All right. Is that an area
6 which is covered by a number of departments,
7 or is it covered by all departments?
8 ANSWER: Depends a little on definition,
9 but I would say not all departments, but most
10 departments, and a lot of outside activity as
11 well.
12 QUESTION: When a smoker smokes a
13 cigarette, what the smoker consumes or
14 inhales is the smoke, not the actual tobacco
15 itself; is that correct?
16 ANSWER: That's correct.
17 QUESTION: And Lorillard has over the
18 years studied the constituent components of
19 tobacco smoke, is that has correct?
20 ANSWER: That is correct.
21 QUESTION: Do you know sitting here today
22 approximately how many components or
23 constituents of tobacco smoke have been
24 identified?
25 ANSWER: I think the estimate is about
26 five thousand, but you must realize that
27 they're not all identified with the same
28 level of certainty and detailed criteria. So
29 it is an estimate for that reason.

30 QUESTION: I understand that. How many
31 of those components approximately have been
32 identified as possible carcinogens?
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14054

1 ANSWER: I guess you're saying animal
2 carcinogens?

3 QUESTION: Yes.

4 ANSWER: Maybe 40.

5 QUESTION: All right. Is it possible for
6 you sitting here to -- I'm not really asking
7 you to name all 40, but do they fall into
8 general groupings that you can identify?

9 ANSWER: Yes, they do.

10 QUESTION: And what are those groupings?

11 ANSWER: They fall into the groupings of
12 polynuclear aromatic hydrocarbons,
13 heterocyclic amines, nitrosamines, certain
14 metals, and Polonium 210. I think that would
15 pretty well cover the categories.

16 QUESTION: Could you explain for the jury
17 the concept of cancer promoters?

18 ANSWER: Yes. On the -- there is an
19 experiment that's done on the backs of mice
20 where you shave the skin and apply materials
21 to that location. And if you apply a
22 carcinogen in a level that's too low to
23 produce tumors in itself, that is, a single
24 or maybe two or three time application and
25 then stop, you would not get any tumors at
26 the site.

27 If you, however, start to apply a
28 compound which in itself does not produce
29 tumors, but causes tumors to develop in this
30 experiment that I'm describing where you're
31 painting another material after the
32 carcinogen and if you do produce tumors in

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14055

1 that way, that's called a promoter. That is
2 a material that in itself does not produce
3 tumors, but does following the application of
4 a small quantity of a carcinogen.

5 QUESTION: And approximately how many
6 cancer promoters have been identified in
7 tobacco smoke?

8 ANSWER: Well, again, this is all related
9 to mouse skin, and one is not sure that this
10 model extends beyond the mouse, and over time
11 there have been various ones, various
12 substances claimed to be promoters.

13 However, some of the repeat experiments
14 suggested if they are, they're very weak
15 promoters, but one category is phenols,
16 thought to be promoters in tobacco smoke,
17 although, certainly not the simple phenols.

18 Some of the polynuclear aromatic
19 hydrocarbons that are not carcinogens
20 themselves may also be promoters.

21 QUESTION: Is it possible -- I'm sorry.

22 ANSWER: That's my answer.

23 QUESTION: When I asked you about
24 carcinogens and tobacco smoke, you said there
25 were approximately 40. Can you put a number
26 on the cancer promoting constituents,
27 components of tobacco smoke?

28 ANSWER: Not a very large number that
29 have been identified. The ones that have
30 been claimed to be promoters at one point in
31 time and not necessarily confirmed are the
32 category of phenols that I mentioned. There

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14056

1 are certain long-chain fatty acids that are
2 thought to be promoters on mouse skin as the
3 two major categories that I --

4 QUESTION: Approximately how many of
5 the -- I've always called it phenols.

6 ANSWER: Phenols.

7 QUESTION: Are there?

8 ANSWER: They're probably about ten,
9 twelve compounds in the category of phenols.

10 QUESTION: And how about for the fatty
11 acids?

12 ANSWER: There are only a few, two or
13 three. Yeah, I was going to add one more. I
14 think decane may have been claimed to be a
15 promoter as well.

16 QUESTION: Okay. If you would take a
17 second and look at Exhibit 2881.01, please.

18 ANSWER: Yes.

19 QUESTION: Okay. Is this a memo which
20 you sent to F. J. Schultz in February, 1986?

21 ANSWER: It appears to be. I'm not sure
22 what the second page, whether it's part of
23 this memo or not.

24 QUESTION: I was going to ask you that
25 question. Let me get to that in one second,
26 but, first, could you identify F. J. Schultz
27 for the jury, please?

28 ANSWER: Yes, he was the vice president
29 for research and development at the time.

30 QUESTION: All right. Just focusing on
31 the first page for the moment, you state that
32 you believe the following three ingredients

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14057

1 should be removed. Is that from all
2 cigarettes or from a particular brand?

3 ANSWER: No, from all cigarettes.

4 QUESTION: All right. And could you
5 identify the three compounds listed?

6 ANSWER: Acetaldehyde, Furfural and
7 Silicon Antifoam.

8 QUESTION: And why did you recommend that
9 they be removed?

10 ANSWER: They were trace components in
11 what we refer to as compounded flavors which
12 are supplied from vendors, and when we review
13 these materials, which we do periodically,
14 some are there in minuscule quantities and
15 are not significant with respect to flavor,

16 and that would have been the case in these
17 three.
18 The Antifoam was something that was, we
19 think, added by the people who did the
20 compounding and it had no purpose, certainly
21 in terms of flavor, and the same is true of
22 the others.
23 QUESTION: These three ingredients, are
24 they considered carcinogenic or cancer
25 promoters?
26 ANSWER: No.
27 QUESTION: Were there any health reasons
28 for their removal?
29 ANSWER: No.
30 QUESTION: Do you recognize this second
31 page?
32 ANSWER: I think it's a list of compounds
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14058

1 that may have been used as flavors at one
2 time or another that we thought should be
3 removed or were candidates for removal.
4 QUESTION: Do you know who would have
5 prepared this list?
6 ANSWER: It could have been prepared by
7 me or it could have been prepared by one of
8 our toxicologists.
9 QUESTION: Just looking at the copy, it
10 appears that this may have been in some sort
11 of binder. Can you tell whether this is a
12 complete list or if this document is just one
13 page of a longer list?
14 ANSWER: No, I can't make that
15 determination.
16 QUESTION: All right. If you look at
17 this list, there are several compounds listed
18 in which -- under the heading "Problem" is
19 listed as tumorigenic. Do you see that?
20 ANSWER: Yes.
21 QUESTION: Do you know whether or not
22 these compounds were, in fact, removed from
23 the cigarettes?
24 ANSWER: I believe they -- I'm not sure
25 all of these were removed, but certainly some
26 of them have been.
27 QUESTION: Can you identify the ones that
28 you believe were removed and when you believe
29 they were removed?
30 ANSWER: I believe those that relate to
31 eugenol, isugenol, coumarin, were all
32 removed. The reason being that there was
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14059

1 a -- an investigator who claimed that these
2 caused some respiratory problems in animals
3 that were exposed to the pure compounds, and
4 not that that was ever confirmed, but we took
5 the precaution of making -- taking them out
6 of our product in the event that there was
7 any additional publicity surrounding these
8 type of compounds.

9 QUESTION: Do you know approximately when
10 that was done?
11 ANSWER: Probably early '80s, but I --
12 yeah, I think in the early '80s.
13 QUESTION: The other compounds, the best
14 you can tell sitting here today, were not
15 taken out?
16 ANSWER: I can't say one way or the
17 other. I'm not sure.
18 QUESTION: All right. Dr. Spears, what
19 is an anti-carcinogen?
20 ANSWER: Again, the same -- using the
21 same model of mouse skin, it is a compound
22 when applied with the carcinogen reduces the
23 activity or the level of the tumors that you
24 get with a carcinogen alone.
25 QUESTION: I don't know if I'm going to
26 pronounce this correctly, but have you ever
27 heard of a compound Selenium?
28 ANSWER: Selenium? Yes.
29 QUESTION: Yes. Is it your understanding
30 that that is thought to be an anti-
31 carcinogen?
32 ANSWER: In certain forms, yes.

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14060

1 QUESTION: All right. Is Selenium
2 contained in any Lorillard cigarettes?
3 ANSWER: Not in any significant quantity.
4 QUESTION: Has Lorillard ever attempted
5 to increase the level of Selenium in its
6 cigarettes?
7 ANSWER: No. Selenium can also be a very
8 toxic material.
9 QUESTION: Let me hand you Exhibit 2785.
10 Give you a second to look at that.
11 ANSWER: Okay.
12 QUESTION: Dr. Spears, is this a report
13 and a letter which you sent to Dr. Parmele in
14 September, 1961?
15 ANSWER: Yes, it is.
16 QUESTION: If you would turn past the
17 coverletter to the first page of your report,
18 it's titled, "Recent progress in cigarette
19 smoke research." The first paragraph reads:
20 " Statistical studies by several
21 investigators indicating a possible
22 correlation between smoking and lung cancer
23 have stimulated others to investigate the buy
24 on logical, chemical and physiological
25 factors related to this problem. Various
26 groups such as those headed by Drs. E. L.
27 Wynder of the Sloan-Kettering Institute, P.
28 Kotin of the University of South California,
29 California, W. Carruthers and H. A. Lindsey
30 of England and H. Druckrey, Germany, have
31 presented chemical and biological evidence in
32 support of the statistical data."

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14061

1 What chemical evidence are you referring

2 to in this paragraph?
3 ANSWER: I believe the identification of
4 animal carcinogens in tobacco smoke.
5 QUESTION: And what biological evidence
6 are you referring to?
7 ANSWER: The skin painting.
8 QUESTION: And the next paragraph states,
9 and I'm not going to read the whole thing,
10 but --
11 ANSWER: I think it's skin painting and
12 various models for measuring ciliary
13 activity.
14 QUESTION: Okay. And maybe --
15 ANSWER: Both are in here, yes.
16 QUESTION: Yeah. The next paragraph
17 refers to two major effects of cigarette
18 smoke on experimental animals. Could you
19 just explain those two effects?
20 ANSWER: Well, one is the skin painting
21 experiment that I described earlier, where if
22 you shave the back of the animal and apply
23 cigarette smoke condensate repeatedly for
24 virtually the lifetime of the animals, you
25 produce tumors.
26 There are two types, a non-malignant
27 tumor and a few malignant ones called
28 papillomas and carcinomas. That's, that's
29 number one type of experiment.
30 And the other is related to ciliary
31 action and mucus flow, and the assay models
32 here are several. One is -- well, there are
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14062
1 various animals that have ciliary activity
2 and these are cells that have a hair-like
3 projection that beat in unison and propel
4 mucus in a direction. In the human being
5 this is in the respiratory tract, the upper
6 respiratory tract, and propels mucus out of
7 the bronchi and bronchia and trachea, and
8 thereby removes any inhaled materials that
9 are trapped on the mucus blanket.
10 The lab models or lab animal models for
11 making a measurement in the lab have been the
12 frog esophagus, which, again, has ciliated
13 activity, clam gills and also small animals
14 such as the cat and the rabbit.
15 And you make these either on excised
16 specimens or on anesthetized animals.
17 QUESTION: And the ciliary action in
18 humans is, in effect, cleaning out the lungs?
19 ANSWER: Cleaning out the upper
20 respiratory tract, yes.
21 QUESTION: Let me hand you Exhibit
22 2755.01. Give you moment to look at that.
23 Let me first ask you, this is a letter
24 prepared by you and sent to J. E Bennett in
25 May of 1966?
26 ANSWER: That is correct.
27 QUESTION: All right. And J. E. Bennett
28 at that time was who?
29 ANSWER: President of Lorillard.

30 QUESTION: Okay. If you look on the
31 first page of the letter itself, the very
32 last sentence reads, "It is thought that the
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14063

1 development of a cigarette, the smoke
2 condensate from which gives little or no
3 tumorigenic response, would be regarded as a
4 highly significant development by the
5 scientific community."

6 And if you carry over to the next page,
7 it continues, "Undoubtedly, such a product
8 would place the corporation in a highly
9 enviable position, and in the writer's
10 opinion, a two or three-fold increase in
11 sales could result within a short period."

12 Do you see those two sentences?

13 ANSWER: I do.

14 QUESTION: You believe the sales increase
15 could result because the public would
16 perceive the cigarette as being safer, isn't
17 that true?

18 ANSWER: I think that's correct, yes.

19 QUESTION: Okay. And you go on, it says:

20 "It is unrealistic to envision a
21 cigarette sales monopoly in that such a
22 product would effectively -- would be
23 effectively duplicated by competitors in a
24 short time. On the other hand, if we fail to
25 pursue this research and/or a competitor
26 marketed a cigarette whose smoke condensate
27 gave little tumorigenic response, the writer
28 is of the opinion that a significant sales
29 loss could result. Considering both the
30 possible sales increase and possible sales
31 loss, research oriented toward the
32 developments of a product showing little

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14064

1 tumorigenic response to mouse epithelium is
2 potentially very desirable." Do you see
3 that?

4 ANSWER: I do.

5 QUESTION: All right. So you were also
6 concerned not only that if Lorillard did not
7 develop such a product, that its competitors
8 would and you could end up losing significant
9 business?

10 ANSWER: Yes, I was obviously justifying
11 the research that we were doing.

12 QUESTION: Okay. Let me hand you Exhibit
13 2876.01. Let me again start off by asking
14 you is this a letter which you sent to Mr.
15 Bennett in February of 1968?

16 ANSWER: That is correct.

17 QUESTION: And the letter appears to have
18 been sent in response to a series of
19 questions or possible questions for an annual
20 meeting?

21 ANSWER: That is correct, yes.

22 QUESTION: All right. If you look at 15,

23 it's a general statement regarding the
24 objectives of Lorillard's research program.
25 And it reads, "The overall objectives of
26 the basic research programs are to conduct
27 investigations which lead to new concepts on
28 which the formulation of new products may be
29 based, to conduct investigations on the basis
30 of existing and new concepts with the
31 ultimate formulation of new products, to
32 conduct investigations on existing products
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14065

1 which lead to improved formulations from the
2 standpoints of increased marketability and
3 profit, and to provide technical assistance
4 to all components of the organization."
5 Now, this paragraph was drafted by
6 yourself, correct?
7 ANSWER: I believe so, yes.
8 QUESTION: All right. I notice, and my
9 question to you is why is not one of the
10 objectives of the research program to
11 research into health issues?
12 ANSWER: I think this would include
13 health issues.
14 QUESTION: The word help, though,
15 obviously does not appear in this statement,
16 does it?
17 ANSWER: No, but "which lead to new
18 concepts on which formulation of new products
19 may be based" would certainly include any
20 concepts relating to health.
21 QUESTION: Okay. Let me ask you to look
22 at Exhibit 2808. Because it's kind of long,
23 let me start off by asking just a few
24 preliminary questions.
25 First off, have you ever seen this
26 document before?
27 ANSWER: I believe I have.
28 QUESTION: All right. And it is written
29 by M. Yellen and sent to M. Cramer. Now, do
30 you know who M. Yellen was in September of
31 1964?

32 ANSWER: I believe he was vice president
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14066

1 of sales or director of sales.
2 QUESTION: All right. And did he
3 ultimately become president for some period
4 of time?
5 ANSWER: I believe he was chairman.
6 QUESTION: All right. And the letter or
7 the memo was written to Mr. Cramer, who was
8 president at that point in time?
9 ANSWER: That is correct.
10 QUESTION: Okay. I'm going to direct
11 your attention to the first page. Do you see
12 where it says, "Let me start with Kent"?
13 ANSWER: I do.
14 QUESTION: All right. And let me read
15 you the beginning part.

16 "As all of us are aware, Kent was
17 marketed as a 'safer' cigarette for the
18 smoker who was concerned about smoking and
19 health. In 1956 when an innocent third
20 party, (Reader's Digest) created an awareness
21 to the consumer that Kent was the 'safest' of
22 all popular filter cigarettes, Lorillard
23 exploited this advantage so that within a
24 short period of two years, the Kent volume
25 grew from less than four billion cigarettes
26 to 38 billion annually."

27 Do you see that section?

28 ANSWER: I do.

29 QUESTION: Were you involved at all in
30 the marketing program or the marketing of
31 Kent as a safer cigarette?

32 ANSWER: No, I was not.

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14067

1 QUESTION: Okay. Let me hand you Exhibit
2 2870.01. I'm sorry. Is this a memo you
3 received from S. T. Jones in December of
4 1972?

5 ANSWER: Yes, it.

6 QUESTION: All right. And the subject
7 says "Review of historical media data on
8 Kent." Had you requested Mr. Jones to obtain
9 the media data on Kent?

10 ANSWER: I don't recall whether I
11 specifically asked for that or not.

12 QUESTION: Who is S. T. Jones, or who was
13 S. T. Jones in December of 1972?

14 ANSWER: I believe at this time he was --
15 he was in research. He is a Ph.D. chemist,
16 but I believe he was working with our
17 licensees and manufacturers overseas that
18 produce Kent cigarette.

19 QUESTION: Do you know why, or can you
20 recall he sent you historical media data on
21 Kent?

22 ANSWER: The best I can recover was just
23 to kind of produce a history of this as it
24 occurred within the U.S.

25 QUESTION: All right. And just so the
26 jury is clear, the media data refers to media
27 as in television, newspaper, magazines,
28 correct?

29 ANSWER: That's correct, and it all
30 relates to the United States.

31 QUESTION: Dr. Spears, I'd like to ask
32 you now some specific questions about the

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14068

1 Kent micronite filter.

2 All right. And do you also recall from
3 your review of the records that Lorillard
4 sent out form letters to doctors extolling
5 the virtues of the micronite filter?

6 ANSWER: Much later, yes.

7 QUESTION: All right. Let me hand you
8 Exhibit 2868.01. Does that exhibit appear to

9 be a copy of one of the form letters sent out
10 by Lorillard to doctors?
11 ANSWER: Yes. Yes, with -- shortly after
12 the introduction of product in '52.
13 QUESTION: Okay. I notice that the form
14 letter is sent on Lorillard Research
15 Laboratory's letterhead. Do you notice that?
16 ANSWER: I do.
17 QUESTION: Do you know generally who
18 would sign these form letters? Was it Dr.
19 Parmele?
20 ANSWER: I do not know.
21 QUESTION: All right.
22 ANSWER: His -- certainly his name is at
23 the top of this letter.
24 QUESTION: The sending of these letters
25 was part of a marketing strategy, wasn't it?
26 ANSWER: I presume, but I don't really
27 know.
28 QUESTION: Do you know why this form
29 letter went out on letterhead of the research
30 laboratories instead of out of the marketing
31 department?
32 ANSWER: Well, if it were signed by
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14069

1 Parmele, I guess that is an identification of
2 his association with the laboratories. Other
3 than that, I have no idea.
4 QUESTION: Okay. All right. Let me hand
5 you Exhibit 2822. This document is titled
6 "Research, 1-3-5 year projection of major
7 projects," and it's dated November, 1973.
8 Have you seen this document before?
9 ANSWER: Yes, I think so, but not in a
10 long time.
11 QUESTION: Do you know who prepared it?
12 ANSWER: I probably did.
13 QUESTION: All right. Subpart F concerns
14 the development of "a safe cigarette," which
15 is "defined as one showing little or no
16 carcinogenic activity when measured by mouse
17 skin painting, which is the objective of
18 long-term research." Do you see that?
19 ANSWER: I do.
20 QUESTION: All right. It says, "We
21 should be in a position to produce sample
22 cigarettes for testing showing greatly
23 reduced carcinogenic activity."
24 My question is were such sample
25 cigarettes ever, in fact, produced?
26 ANSWER: No, I don't believe such
27 cigarettes were ever produced.
28 QUESTION: Let me hand you Exhibit
29 2926.01. Have you ever seen this document?
30 ANSWER: I don't believe so.
31 QUESTION: It has the name Dr. Donald
32 Ford at the top and at the end. Do you know
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14070

1 of Dr. Donald Ford?

2 ANSWER: He was a member of the Council
3 for Tobacco Research staff.
4 QUESTION: All right. "Although it now
5 seems evident that nicotine, like narcotics,
6 influences the CNS in multiple ways involving
7 effects related to most of the known
8 neurotransmitters."
9 My question is simply do you agree that
10 nicotine influences the central nervous
11 system in multiple ways?
12 ANSWER: Yes. I think there's adequate
13 evidence that it -- that there are various
14 receptors in the central nervous system with
15 which nicotine interacts.
16 QUESTION: All right. The next sentence
17 states:
18 "Further, the dependence which develops
19 the tobacco in human (plus withdrawal
20 symptoms during cessation of smoking) and the
21 degree of tolerance to nicotine which occurs
22 in certain paradigms, strongly suggest that
23 nicotine is an habituating agent."
24 Do you agree with that statement?
25 ANSWER: Not in -- not this strongly, no.
26 QUESTION: I'm sorry, not --
27 ANSWER: Not the word strongly.
28 QUESTION: Other than that, would you --
29 ANSWER: I think there's some suggestion,
30 yes.
31 QUESTION: All right. Would you turn to
32 Page 4, please? Under the heading III -- are
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14071
1 you there?
2 ANSWER: Yes. I'm wondering in my own
3 mind if this is really a piece that was
4 written to try to promote a particular area
5 of research.
6 QUESTION: Again, feel free to look at
7 it. I'll ask you my question and if you need
8 to read it, feel free.
9 ANSWER: Well, the only thing I'd say if
10 it is that, and I don't know how to make that
11 determination, but I suspect it is, it may
12 have some biases in it from the author's
13 point of view for conducting this kind of
14 research.
15 QUESTION: Okay. I'm going to change
16 subjects slightly. I want to talk to you
17 about tobacco leaf, the different types of
18 tobacco leaves. You can put that down if you
19 wish.
20 Generally, in the United States, there
21 are three type of tobacco leaves used in the
22 manufacture of cigarettes, is that correct?
23 ANSWER: I would say two.
24 QUESTION: All right. What are the two?
25 ANSWER: One -- that one called
26 flue-cured or bright tobacco, which are
27 synonymous terms, and Burly tobacco.
28 QUESTION: All right. At one point in
29 time, was oriental tobacco leaf used?

30 ANSWER: It is used -- it is used today,
31 but not grown in this country.

32 QUESTION: Okay. I'm just referring to
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14072

1 what's used in the manufacture of cigarettes,
2 regardless of where it's grown.

3 ANSWER: Yes, oriental is used.

4 QUESTION: All right. And do those three
5 types -- different types of tobacco leaves
6 contain different amounts of nicotine in the
7 leaves?

8 ANSWER: On average, yes.

9 QUESTION: All right. And could you rank
10 them in order from highest to lowest?

11 ANSWER: As I say, there's overlap, but
12 on average, Burly would be the highest,
13 flue-cured second and oriental lowest.

14 QUESTION: All right. Now, Lorillard,
15 when it manufactures its cigarettes, blends
16 some combination of Burly, flue-cured and
17 oriental in its different cigarettes?

18 ANSWER: It does.

19 QUESTION: And does it use a different
20 combination for each brand, or does it use
21 the same combination for all brands?

22 ANSWER: It does not use the same
23 combination for all brands.

24 QUESTION: All right. Now, by blending
25 these different tobacco leaves, I think you
26 said oriental has the lowest nicotine
27 content?

28 ANSWER: That is correct.

29 QUESTION: All right. If you blend
30 oriental tobacco leaf with Burly tobacco
31 leaf, for example, the average nicotine level
32 will be higher than that contained simply in

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14073

1 the oriental tobacco leaf, correct?

2 ANSWER: I think it would.

3 QUESTION: Okay. Well, let me just ask
4 you simply, isn't it true that the level of
5 nicotine in the tobacco leaf can be affected
6 by how the tobacco plant itself is grown?

7 ANSWER: Yes, I mean, but not
8 dramatically. If you -- if you're growing a
9 variety and a particular seed, there are
10 variations due to climate during the time
11 you're growing it, whether you get rainfall,
12 not rainfall, that sort of thing. And, yes,
13 this does affect nicotine levels.

14 QUESTION: Doctor, I should have asked
15 you this a little bit earlier. When we were
16 talking about blending, how long has
17 Lorillard been blending different tobacco
18 plants in the manufacture of its cigarettes?

19 ANSWER: Well, I think from when the
20 initial cigarette was manufactured.

21 QUESTION: All right. Let me hand you
22 Exhibit 2804. Here you go. Have you seen

23 this document before?
24 ANSWER: It was written to me, so I must
25 have seen it.
26 QUESTION: Let me ask you, it was written
27 by S. T. Jones -- Dr. Jones?
28 ANSWER: Correct.
29 QUESTION: In February of 1971, correct?
30 ANSWER: That is correct.
31 QUESTION: Do you know what Dr. Jones's
32 position was in 1971?

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14074

1 ANSWER: He was, as I said, a chemist in
2 our laboratories, and --
3 QUESTION: Now, this memo concerns an
4 analysis that he or someone under his
5 direction did of competing cigarette brands,
6 correct?
7 ANSWER: That's correct.
8 QUESTION: And Lorillard regularly
9 performs analyses of competitors' brands,
10 does it not?
11 ANSWER: Yes, we do, a number of times
12 per year, I think.
13 QUESTION: How frequently per year are
14 these analyses performed?
15 ANSWER: I think maybe every six months.
16 QUESTION: And how long has that been
17 going on?
18 ANSWER: A very long time.
19 QUESTION: All right. As long as you've
20 been there, as far as you know?
21 ANSWER: Yes, although, you know, we
22 don't always measure the same brands.
23 QUESTION: All right. If you go to the
24 first page, the third paragraph...
25 ANSWER: All right.
26 QUESTION: All right. It says,
27 "Particular attention should be paid to the
28 last three columns in both Tables I and II.
29 It has become apparent from the available
30 data that the top sellers, e.g., Winston,
31 Salem, Marlboro and Kool are all fairly high
32 in smoke nicotine."

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14075

1 With respect to that statement, I just
2 want you to clarify some terms. Smoke
3 nicotine is referring to the nicotine in the
4 smoke as opposed to in the tobacco leaf?
5 ANSWER: That is correct.
6 QUESTION: All right. And can you tell
7 me who manufactures Winston, or who
8 manufactured it in 1971?
9 ANSWER: R. J. Reynolds.
10 QUESTION: How about Salem?
11 ANSWER: R. J. Reynolds.
12 QUESTION: Marlboro?
13 ANSWER: Philip Morris.
14 QUESTION: Kool?
15 ANSWER: Brown & Williamson.

16 QUESTION: All right. It goes on,
17 "However, there are other brands high in
18 nicotine which are not top sellers. The one
19 other parameter common to the top sellers is
20 the ratio of smoke nicotine to tar."

21 The -- could you just generally tell the
22 jury what tar -- what tar is -- what tar
23 means as used here?

24 ANSWER: Tar is defined as the smoke that
25 you collect on a filter pad when you smoke
26 the cigarette under standard conditions,
27 mechanically smoking it in the machine.

28 What you collect on the pad, you analyze
29 for nicotine and you analyze for water, and
30 after you subtract those two items, the
31 remaining material is referred to as tar.

32 QUESTION: Let me hand you, Doctor,
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14076

1 Exhibit 909.01. Ask you generally is that a
2 copy of an article prepared by you?

3 ANSWER: By Jones and I, yes.

4 QUESTION: All right. And it was
5 prepared in 1981 or around that time?

6 ANSWER: That's correct.

7 QUESTION: All right. And it concerns
8 the chemical -- or the title is "Chemical and
9 physical criteria for tobacco leaf in modern
10 day cigarettes," correct?

11 ANSWER: That is correct.

12 QUESTION: Let me ask you to turn to Page
13 24, then.

14 ANSWER: All right.

15 QUESTION: At the very top it says:

16 "These represent the components from
17 which the composite blend may be formulated.
18 Higher nicotine levels can be achieved by
19 decreasing oriental in the stem and tobacco
20 sheet and increasing the Burly and upper
21 stalk portions of both the flue-cured and the
22 Burly tobacco."

23 Would you just explain that second
24 sentence?

25 ANSWER: It says:

26 "Higher nicotine levels can be achieved
27 by decreasing oriental," and that would be
28 because oriental on average is lower than the
29 flue-cured or Burly types. And the stem,
30 which is the -- when you have a tobacco leaf
31 picked from the field, it has a mid- -- a mid
32 rib I guess you might call it that runs up

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14077

1 the center of the leaf and then there are
2 branches which are kind of veins in the leaf.

3 These are all referred to as a stem and
4 these are separated in the processing of the
5 tobacco from the lamina of the leaf.

6 So that these stemmy materials, or stem,
7 is a by-product of separating out the lamina.
8 They're also available for the manufacture of

9 cigarettes. Particularly they're
10 incorporated in what's called reconstituted
11 sheet.
12 These stemmy materials are much lower in
13 nicotine than the lamina. So if you
14 incorporate those, you lower the nicotine
15 level of the average.
16 And I think that's the meaning of what's
17 stated.
18 QUESTION: Dr. Spears, let me ask you
19 just some general questions.
20 Once the cigarette is manufactured,
21 there is, in fact, a set amount of nicotine
22 in that cigarette, isn't -- isn't that true?
23 ANSWER: Once it's manufactured, yes.
24 QUESTION: All right. But the amount of
25 nicotine which is transferred from the
26 tobacco itself into the tobacco smoke can be
27 manipulated, can't it?
28 ANSWER: It varies with filter and other
29 construction parameters, yes. Principally,
30 the filter and air ventilation.
31 QUESTION: All right. Let me hand you
32 Exhibit 910.01. Is this --

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14078

1 ANSWER: I --
2 QUESTION: I'm sorry. Is this --
3 ANSWER: I --
4 QUESTION: Okay. Let's try it again. Is
5 this a paper you prepared?
6 ANSWER: That's correct.
7 QUESTION: And it's titled, "Factors
8 Affecting Smoke Delivery of Nicotine and
9 Carbon Monoxide"?
10 ANSWER: That's correct.
11 QUESTION: You prepared it around
12 November 1975 -- I'm sorry, November 1975.
13 ANSWER: Yes.
14 QUESTION: All right. On the second
15 page, which is Page 13, in that first
16 paragraph you generally describe methods by
17 which the nicotine yield of cigarettes can be
18 determined and affected. Is that a fair
19 summary?
20 ANSWER: I list the factors that
21 determine the nicotine yield of the
22 signature.
23 QUESTION: Yes. The very last sentence
24 in that paragraph states "Through the
25 combination of these variables, plant
26 genetics and commercial processes to remove
27 nicotine from tobacco, it is possible to
28 manipulate the yield of nicotine from about
29 .1 mg to 4 mg per cigarette."
30 My first question, I want to make sure
31 that it's correct, it's .1 mg to .4 mg.
32 ANSWER: No. I think it's 4.

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14079

1 QUESTION: I'm sorry. I wanted to be

2 correct and I stated it wrong. Let me try it
3 again. It is .1 milligrams to 4 milligrams?
4 ANSWER: That's correct.
5 QUESTION: Okay. And the nicotine yield
6 refers to the amount of nicotine which gets
7 into the tobacco smoke, correct?
8 ANSWER: That is correct.
9 QUESTION: If you turn to the prior
10 page --
11 ANSWER: These are not commercial
12 cigarettes now. We're just talking about the
13 range over which you could formulate a
14 cigarette giving these variables in their
15 extreme.
16 QUESTION: Okay. Let's go to 2823. If
17 you look on the last page, it does appear to
18 have your initials.
19 ANSWER: Yes.
20 QUESTION: And it also has the date
21 November 13th, 1973. Do you see that?
22 ANSWER: I do.
23 QUESTION: All right. Does that suggest
24 to you or can you tell looking at this if you
25 prepared this document?
26 ANSWER: I believe I did.
27 QUESTION: Do you know what you would
28 have prepared this document for?
29 ANSWER: My guess is it was prepared for
30 some presentation, internal presentation, but
31 I have no recollection as to what it was.
32 QUESTION: Can you tell what the general
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14080

1 subject matter of the presentation would have
2 been?
3 ANSWER: I think it's mostly relating to
4 what I thought market consumer acceptance of
5 cigarettes was related to.
6 QUESTION: Dr. Spears, let's look at
7 Exhibit 2823. I want to ask you a couple of
8 questions.
9 Start by directing your attention to
10 Page 2, the last paragraph which carries over
11 to Page 3. The first two sentences read,
12 "The second element in acceptance is
13 psychological. One principal component of
14 this element arise from our marketing
15 effort."
16 Can you explain what's meant by that
17 statement?
18 ANSWER: Yes. I think it means that the
19 image created by marketing is a factor in
20 acceptance.
21 QUESTION: Okay. Would you turn to Page
22 5, please. The paragraph which starts that
23 page reads, "Before conducting" -- I'm sorry
24 "Before concluding my remarks on product
25 acceptance, I want to return to the element
26 of psychological acceptance and discuss
27 another component of this element which we
28 will call 'health psychology.' Clearly, the
29 consumer is concerned about smoking and

30 health and is convinced in varying degrees
31 that smoking is a possible detriment to his
32 health. Presently, this factor is of active
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14081

1 interest to R & D since this has been used to
2 an advantage in marketing both the Kent and
3 True brands."

4 Did it appear that I read that
5 correctly?

6 ANSWER: I believe so.

7 QUESTION: All right. Did Lorillard do
8 research into the consumer psychology with
9 respect to health issues that you're aware
10 of?

11 ANSWER: Not in any major way. I kind of
12 vaguely remember some reports that were on
13 the, you know, awareness or health
14 consciousness of smokers.

15 QUESTION: Would that have been done by
16 the Research Department or the Marketing
17 Department?

18 ANSWER: No, it would not have been done
19 by the Research Department, but rather
20 probably an outside organization.

21 QUESTION: Okay. Would it have been --
22 would those reports have been sent to the
23 Research Department as opposed to the
24 Marketing Department?

25 ANSWER: No, they would have gone to the
26 Marketing Department.

27 QUESTION: Okay. Would you back up to
28 Page 3. See the second page where it says,
29 "The research activities on the physiological
30 element are concerned with nicotine"?

31 ANSWER: Yes.

32 QUESTION: What does the term
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14082

1 physiological mean?

2 ANSWER: I believe it means in this sense
3 the action of nicotine on the smoker.

4 QUESTION: Physically on the smoker?

5 ANSWER: Yes.

6 QUESTION: Let's go back to --

7 ANSWER: Or pharmacologically.

8 QUESTION: What's the difference between
9 pharmacologically and physiologically --
10 physiological?

11 ANSWER: I think it's context.

12 QUESTION: My question is were any
13 varieties of tobacco which were free of
14 nicotine ever developed or grown?

15 ANSWER: Yes, they were.

16 QUESTION: Were they ever used in any
17 commercial cigarettes?

18 ANSWER: Only experimental.

19 QUESTION: And why were they not used?

20 ANSWER: Well, these were new varieties
21 or varieties which were genetically altered
22 and one was flue-cured and one was Burly.

23 They were done at the university.
24 And the principal use of these was to
25 see what kind of changes there may be in the
26 composition of smoke and whether there was a
27 difference in response in mouse skin to
28 tobaccos which had been genetically altered
29 to essentially eliminate nicotine.
30 QUESTION: And which university are you
31 referring to?
32 ANSWER: Both university at Kentucky --
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14083

1 or Lexington, University of -- well, I guess
2 NC State in North Carolina.

3 QUESTION: And did Lorillard ever test
4 market any cigarettes using nicotine free
5 tobacco?

6 ANSWER: No, we did not.
7 (Videotape suspended; in open court:)

8 MR. REDFEARN:
9 Your Honor, this may be a good time for
10 the afternoon break, if you wish, or we can
11 continue.

12 THE COURT:
13 We normally break at 2:45. It is -- is
14 the subject matter changing drastically?

15 MR. REDFEARN:
16 It's generally going on different
17 documents. The subject matter may be
18 related, but it will be moving on to a
19 different series of questions.

20 THE COURT:
21 No. Let's continue on to 2:45.
22 (Resumption of playing of
23 videotape.)

24 QUESTION: Okay. Let me hand you Exhibit
25 2767.0

26 1. I'll give you a moment to look it over.
27 You ever seen this document before?

28 ANSWER: I'm copied, but I don't really
29 recall.

30 QUESTION: Let me ask you, it's a memo
31 from Dr. Jones to Eric O'Toole, dated June,
32 1972, correct?

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14084

1 ANSWER: That is correct.

2 QUESTION: Who is Eric O'Toole, or who
3 was Eric O'Toole at that time?

4 ANSWER: I think Eric O'Toole was in our
5 international organization.

6 QUESTION: All right. Generally this
7 memo concerns a goal of increasing the
8 nicotine delivery in the True cigarette to
9 1.2 milligrams, correct?

10 ANSWER: In Venezuela.

11 QUESTION: If you look on the second
12 page, the second paragraph, it states, "By
13 this time we have generated data on the
14 Venezuelan True cigarettes supplied by Bigott
15 and realized we could approach a nicotine

16 delivery of 1.2 milligrams by using the
17 present True filter tow and lessening its
18 filter efficiency." Do you see that?
19 ANSWER: Yes.
20 QUESTION: All right. What, what does it
21 mean when it refers to the True filter tow?
22 Can you explain that?
23 ANSWER: The material that is used to
24 make a cigarette is a continuous filament of
25 cellulose acetate, and a bundle of these
26 filaments, continuous filaments, is a
27 starting material. It comes in a bale and is
28 a bundle of continuous filaments and it's
29 referred to as tow.
30 QUESTION: All right. And when it says
31 "lessening the filter efficiency," it's just
32 referring to allowing more constituents to
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14085

1 pass through the filter?
2 ANSWER: To make it less efficient, yes.
3 QUESTION: All right.
4 ANSWER: But it said it could do it by
5 using the same tow.
6 QUESTION: Let me hand you Exhibit 2819
7 and ask if you've ever seen this document?
8 ANSWER: Yes, I think I have.
9 QUESTION: If you look on the top of the
10 memo, it will have the page number, Page 3 on
11 the memo. The Bates stamp Number on the
12 bottom is 25850.
13 ANSWER: I see it.
14 QUESTION: All right. You see the third
15 paragraph, "Another source..."
16 ANSWER: Yes. Yes, I do.
17 QUESTION: It says, another source of
18 nitrogen in the nicotine level was found to
19 be higher in the Marlboro RL than the level
20 found in the total Marlboro blend. This
21 result creates the strong possibility that
22 Philip Morris is using some form of nicotine
23 as an RL additive.
24 First, let me ask you, the letters RL,
25 is that referring to reconstituted leaf?
26 ANSWER: Yes, it is.
27 QUESTION: Is that the same thing as
28 reconstituted sheet that you referred to
29 earlier?
30 ANSWER: Yes, yes, it is.
31 QUESTION: All right. What is the
32 distinction between the RL in the total blend
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14086

1 that is being made here?
2 ANSWER: In this paragraph?
3 QUESTION: Yes. They have separated
4 physically by picking it apart, the tobacco
5 blend that's in the competitive brand,
6 Marlboro, and you can -- under a microscope,
7 you can distinguish the reconstituted leaf
8 from the natural lamina. It has a different

9 appearance. They have separated the two and
10 analyzed them separately and make this
11 statement following the analysis.

12 QUESTION: Okay. Let me ask you to turn
13 to Page 5. I'm going to direct your
14 attention to the second full paragraph, "A
15 major reason," you see that?

16 ANSWER: I do.

17 QUESTION: It says, "A major reason for
18 this strength discrepancy was thought to be
19 the variation in smoke pH which has become an
20 item of great importance within the last
21 several years. Data resulting from recent
22 investigations has substantiated the fact
23 that the amount of free nicotine contained in
24 the smoke mainstream increases with increases
25 in pH -- in smoke pH, subsequently imparting
26 increased impact."

27 Let me ask you, what is free nicotine?

28 ANSWER: Nicotine is a base. The
29 definition of chemical acids in bases. And
30 if you have a base, it can react with an acid
31 to form a salt, and that is -- would be
32 referred to as bound nicotine or nicotine

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New Orleans, Louisiana (504) 525-1753

14087

1 that's not very volatile.

2 If it's the nicotine free-base, that is,
3 without salt formation, it is more volatile
4 and it's referred to as free nicotine.

5 QUESTION: All right. And it uses the
6 term smoke mainstream. Is that just the same
7 as stock smoke?

8 ANSWER: That's correct, as opposed to
9 side-stream smoke.

10 QUESTION: All right. Look at the next
11 paragraph. It says, "In looking for
12 additives which would produce basic fractions
13 during pyrolysis and thus increase smoke pH,
14 the relationship between Wisconsin, Burly and
15 flue-cured types of tobacco was considered.
16 Past experience has shown that Wisconsin
17 tobacco can have a lower nicotine content
18 than other Burly tobaccos, but have more
19 impact due to the higher smoke pH."

20 The term pyrolysis as used in this
21 sentence, what does that refer to?

22 ANSWER: That refers to the process that
23 goes on when you burn tobacco in a cigarette.

24 QUESTION: All right. Now, it refers to
25 Wisconsin type of tobacco, and I gather from
26 this is Wisconsin a form of Burly tobacco?

27 ANSWER: Yes, it's more like a cigar
28 tobacco.

29 QUESTION: Is the Wisconsin type of
30 tobacco used in any of the Lorillard
31 cigarettes?

32 ANSWER: No, it's not.

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14088

1 QUESTION: Will you turn to Page 7,

2 please? At the very top, it says, "From the
3 table it can be seen that a significant
4 increase in the smoke pH was achieved by the
5 addition of --" I may not pronounce these
6 correctly, but "guanidine carbonate,
7 asparagine and urea." Do you see that?
8 ANSWER: I do.
9 QUESTION: What are those chemicals or
10 compounds, those four that I just mentioned?
11 ANSWER: They're alkaline materials. The
12 first two are -- well, they're organic
13 alkaline materials. And that includes -- and
14 one of them is an amino acid, asparagine.
15 But they're basically alkaline materials
16 of an organic nature.
17 QUESTION: Does Lorillard use any of
18 these chemicals or materials in any of its
19 cigarettes?
20 ANSWER: We do not.
21 QUESTION: Has it ever?
22 ANSWER: No.
23 QUESTION: Thank you. Let me hand you
24 Exhibit 2770.01. Have you seen this document
25 before?
26 ANSWER: That's a research project
27 request. I don't remember seeing this
28 specific one.
29 QUESTION: Do you know if this project,
30 the nicotine delivered project, was approved?
31 ANSWER: Yes, I would have approved this
32 project.

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14089

1 QUESTION: And it state that's the
2 principal objectives -- or the principal
3 objective of this project is to increase
4 mainstream delivery of nicotine deliver and
5 impact of available nicotine. The word
6 impact as used in this statement, what does
7 it mean to you?
8 ANSWER: The same definition I gave you
9 earlier.
10 QUESTION: The...
11 ANSWER: The sensation in the upper
12 respiratory tract, a slight choking
13 sensation.
14 QUESTION: All right. Why would you want
15 to increase the impact as you defined it of
16 nicotine?
17 ANSWER: Well, this project really
18 relates to low tar cigarettes, not higher tar
19 cigarettes, and it was trying to improve the
20 acceptance of that type of cigarette by
21 increasing delivery of nicotine and
22 theoretically decreasing delivery of tar.
23 QUESTION: Let me hand you Exhibit 2865.
24 Have you ever seen this document before?
25 ANSWER: Yes, I have.
26 QUESTION: Okay. And this is a report
27 titled "pH of smoke, a review," prepared in
28 1976 by Leighton Chen?
29 ANSWER: Correct.

30 QUESTION: And who is Leighton Chen?
31 ANSWER: He was a chemist in our
32 laboratory at that time.
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14090

1 QUESTION: All right. Would you turn to
2 Page 11? Do you see at the very bottom the
3 chart?
4 ANSWER: I do.
5 QUESTION: And there's a statement, "The
6 market leaders appear to have higher pHs, and
7 hence a higher concentration of free-base
8 nicotine."
9 ANSWER: I see that.
10 QUESTION: All right. And on the chart,
11 it looks -- it's either L or 1R or LR --
12 ANSWER: Its 1R1.
13 QUESTION: Is that a company or is that
14 just a signature -- well, what -- what does
15 that stand for?
16 ANSWER: That is a reference cigarette
17 that is sold through the University of
18 Kentucky to investigators who want, you know,
19 want a standard cigarette that's unchanging
20 and has a reference point for their work.
21 QUESTION: Would you turn to Page 12,
22 please?
23 ANSWER: (Witness complied)
24 QUESTION: See that first paragraph, the
25 last sentence, "The viable means of
26 increasing the pH appear to be blend
27 alteration, selective filtration techniques
28 and/or the use of basic chemicals." Do you
29 see that sentence?
30 ANSWER: I do.
31 QUESTION: How would the use of selective
32 filtration or how could the use of selective
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14091

1 filtration increase the smoke pH?
2 ANSWER: If you had a filter that
3 selectively removed acidic materials, you
4 would expect increase or lower -- increase
5 the pH of the smoke by virtue of having
6 removed components that lower the pH.
7 QUESTION: Okay. There's a reference in
8 the next paragraph, and you've mentioned this
9 before, to diammonium phosphate. Lorillard
10 uses diammonium phosphates in its cigarettes,
11 correct?
12 ANSWER: That is correct.
13 QUESTION: And has it always used
14 diammonium phosphate in its cigarettes?
15 ANSWER: No.
16 QUESTION: Let me hand you Exhibit 2894.
17 Appears that the exhibit Number got cut off
18 in the copying of your copy. Have you ever
19 seen this document before?
20 ANSWER: Yes, I believe I have.
21 QUESTION: And who prepared this
22 document?

23 ANSWER: It says M. A. Skladanowski.
24 QUESTION: And who is that person?
25 ANSWER: She, she was a chemist in the
26 laboratory.
27 QUESTION: All right. And that was in
28 1977?
29 ANSWER: Yes.
30 QUESTION: To go back to the top, it
31 says, "At the present time Lorillard makes
32 two cigarettes with combined air dilution and
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14092

1 cellulose acetate filtering systems. The
2 nicotine to tar ratios in the smoke of both
3 cigarettes is greater than the ratios in the
4 respective controls."
5 Do you know what two cigarettes are
6 referred to in this statement?
7 ANSWER: Probably True and Kent 3.
8 QUESTION: All right. And are True and
9 Kent 3 manufactured today?
10 ANSWER: They are.
11 QUESTION: Would you turn to Page 4,
12 please? If you look in the third paragraph,
13 "The tar and nicotine..." Do you see that
14 paragraph.
15 ANSWER: I do.
16 QUESTION: It says, "The tar and nicotine
17 in the mainstream smoke of total air dilution
18 cigarettes could be adjusted by modifying the
19 size of the air vents or the smoke
20 passageways as shown on Table 3. First, what
21 are the air vents that they're talking about?
22 ANSWER: These are holes that are in the
23 filter wraps that allow air to come in
24 through the holes during the puffing of the
25 cigarette.
26 QUESTION: Are these -- are these air
27 vent holes of a standard size for all
28 Lorillard brand cigarettes?
29 ANSWER: No, they're not.
30 QUESTION: They differ for each
31 cigarette.

32 ANSWER: They differ depending on how
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14093

1 they're made, and they can be made by
2 mechanical perforation or they can be made by
3 laser burning the hole.
4 QUESTION: Which --
5 ANSWER: And we've used both methods over
6 time and I don't know at any point in time
7 which method would have been used on which
8 product.
9 QUESTION: All right. What are the smoke
10 passageways that are referred to as being
11 shown in Table 3?
12 ANSWER: Where do you see smoke
13 passage -- oh, the reference.
14 QUESTION: Uses the phrase "smoke
15 passageway as shown in Table 3."

16 ANSWER: I think -- I think they're the
17 same as the holes.
18 QUESTION: Let me ask you --
19 ANSWER: You could have, I guess, vents
20 going down the outside of the filter, the
21 outer periphery of the filter.
22 QUESTION: Let me ask you if you would
23 turn to figure 1, which is Bates stamped
24 29252.
25 ANSWER: Okay.
26 QUESTION: Does this appear to be a
27 diagram of showing smoke passageways?
28 ANSWER: Yes, that's what I was referring
29 to. It could be channels down the outside of
30 the filter.
31 QUESTION: So, that would be something
32 different from the air vents?
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14094

1 ANSWER: It would, yes.
2 QUESTION: Okay.
3 (Videotape suspended; in open court:)
4 MR. REDFEARN:
5 Your Honor, we're about to move on to
6 another document. Maybe --
7 THE COURT:
8 All right. We'll take our midafternoon
9 recess at this point until 3:00 by the wall
10 clock.
11 (Jury excused.)
12 THE COURT:
13 The record should reflect the jury has
14 left the courtroom.
15 Anything for the record by plaintiffs?
16 MR. RUSS HERMAN:
17 No, Your Honor.
18 THE COURT:
19 Defendants?
20 MR. LONG:
21 No, Your Honor.
22 MR. WITTMANN:
23 No, Your Honor.
24 THE COURT:
25 All right. We'll recess until 3:00.
26 (Whereupon, a brief recess is taken.)
27 (Jury returns.)
28 THE LAW CLERK:
29 All rise. Recess is over. Court will
30 come to order.
31 THE COURT:
32 Please be seated.
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14095

1 MR. REDFEARN:
2 May we continue, Your Honor?
3 THE COURT:
4 Yes
5 (Resumption of playing of
6 videotape.)
7 QUESTION: Let me hand you Exhibit 2897.
8 Have you seen this document before?

9 ANSWER: Yes, I have.
10 QUESTION: And it's from Dr. Minnemeyer
11 to you in April 1997?
12 ANSWER: It is, yes.
13 QUESTION: All right. In the summary
14 statement, it says, "Nicotine alkaloid was
15 added to three batches of RL and SL slurry in
16 Danville to give RL and SL with enriched
17 nicotine content." RL is reconstituted
18 sheet, correct?
19 ANSWER: That is correct.
20 QUESTION: What is SL, SL slurry?
21 ANSWER: I don't see it used otherwise in
22 the document.
23 QUESTION: It's not a term you're
24 familiar with?
25 ANSWER: No.
26 QUESTION: There's a reference to
27 Danville. Is Danville or was Danville at
28 that time one of the processing or
29 manufacturing plants of Lorillard?
30 ANSWER: Yes, that's where we
31 manufactured the reconstituted leaf. I don't
32 know... I don't know what SL slurry refers
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14096

1 to.
2 QUESTION: Okay. If you look at the very
3 last sentence on that front page, it states
4 that, "Tobacco scientists know that
5 physiological satisfaction is almost totally
6 related to nicotine intake."
7 The term physiological satisfaction as
8 used in this, does that have the same meaning
9 as pharmacological satisfaction to you?
10 ANSWER: I think it probably does, but I
11 think it's also an overstatement.
12 QUESTION: Dr. Spears, let me hand you
13 Exhibit 3001 and ask you if you've ever seen
14 this before.
15 ANSWER: I believe I have, yes.
16 QUESTION: This is a memo from T. D.
17 Jessup and B. R. Nichols to D. R. Tedder in
18 December of 1980. Who are Mr. Jessup and
19 Nichols?
20 ANSWER: They're both chemists at
21 Lorillard, or they were at that time.
22 QUESTION: I'm sorry. And who is D. R.
23 Tedder.
24 ANSWER: He is -- I guess he was in
25 charge of our leaf program at this time.
26 QUESTION: All right. And the memo
27 states, "We have examined the RL of our chief
28 competitors (RJR and PM) across a range of
29 tar values."
30 Is this the same -- we had talked
31 earlier about a semiannual analysis that
32 Lorillard did of its competing brands. Is
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14097

1 that what this is or is this something

2 different?
3 ANSWER: No, this is something different.
4 QUESTION: All right. Is this sort of
5 examination done on a periodic basis by
6 Lorillard?
7 ANSWER: It has been done. I don't know
8 that it's a routine, but rather when someone
9 asks for it.
10 QUESTION: All right. Looking at this
11 particular document in December of 1980, do
12 you know if there was any particular reason
13 this analysis was done at that time?
14 ANSWER: Since it's written to D. R.
15 Tedder, my guess would be that he asked for
16 it.
17 QUESTION: If you would turn to the next
18 page, towards the bottom, bottom paragraph,
19 it, it states, "It is obvious from the data
20 that the Marlboro 2 RL and Merit 2 RL are
21 different from normal reconstituted tobaccos
22 (high percentage of nicotine)." Do you see
23 that?
24 ANSWER: I do.
25 QUESTION: The Marlboro 2 RL, is that --
26 do you know what -- well, let me ask you
27 this. Are Marlboro 1 and Marlboro 2, are
28 they the same cigarette that are being
29 examined?
30 ANSWER: They can be two types of RL in
31 the same cigarette, yes, and I think that's
32 the case.

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14098

1 QUESTION: All right. And then the same
2 is true for Merit, where it's referring to
3 Merit 2 RL?
4 ANSWER: Yes.
5 QUESTION: Now, it goes on to state, "We
6 can think of four ways this could be
7 accomplished: Addition of nicotine, an
8 additive of diammonium phosphate, which would
9 extract nicotine from other parts of blend;
10 start with raw materials that contain a high
11 percentage of nicotine; or some combination
12 of the above."
13 Are there any other methods as we sit
14 here today that you think could be added to
15 this list of four methods?
16 ANSWER: No, I'm not aware of any other.
17 QUESTION: Would you turn to the -- or
18 two pages down it has Lorillard Bates Number
19 29473. You see where it's referring to
20 "Now..."
21 ANSWER: I do.
22 QUESTION: The last paragraph says, "Now
23 has a very high percentage of puffed tobacco
24 in blend."
25 ANSWER: Yes.
26 QUESTION: Would you explain what puffed
27 tobacco is?
28 ANSWER: Yes. Puffed tobacco results
29 from a process in which you take the cured,

30 dried tobacco, remoisten it and at the same
31 time treat it with a volatile material. It
32 goes inside the cells of the tobacco and
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14099

1 expands the cells and the cell walls so that
2 you have a higher volume of puffed material,
3 a material that's less dense than tobacco
4 that you would normally have that's dried.
5 It occupies more space per unit weight.
6 QUESTION: Is there any advantage to its
7 use?

8 ANSWER: It reduces the amount of tobacco
9 that you need to fill it to a certain volume.
10 And it also has -- appears to have a little
11 less biological activity on mouse skin to
12 condensate from this.

13 QUESTION: Does Lorillard use puffed
14 tobacco in any of its cigarette brands?

15 ANSWER: Yes, we do.

16 QUESTION: Do you use it in all of your
17 cigarette brands?

18 ANSWER: Yes, we do.

19 QUESTION: All right. Let me hand you --
20 let me hand you Exhibit 2880 and ask if
21 you've seen this document before?

22 ANSWER: Yes, I have.

23 QUESTION: All right. And this is a
24 report prepared in 1976 by a Dr. Tong?

25 ANSWER: Correct.

26 QUESTION: And who is Dr. Tong, or what
27 was his position in 1976?

28 ANSWER: He was a pharmacologist with
29 Lorillard.

30 QUESTION: All right. It says, "It seems
31 that, within limits, smokers can and do
32 control their nicotine intake from smoke by

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14100

1 varying their smoking techniques."

2 Is that a statement of the theory of
3 compensation?

4 ANSWER: No, I don't think it -- it's not
5 a statement of compensation. It's a
6 statement that smokers can and do vary their
7 nicotine content by the way they puff on a
8 cigarette, the number of puffs they take,
9 whether they let it sit in an ashtray and
10 burn down.

11 They can vary the nicotine intake pretty
12 dramatically from one smoker to the next.

13 QUESTION: All right. If you look
14 further down, closer to the end of this
15 paragraph, you see where it says, "Drug
16 addiction research..."

17 ANSWER: Yes, I do.

18 QUESTION: All right. It states, Drug
19 addiction research indicates that the central
20 nervous system is the prime site of drug
21 action. In order to understand more fully
22 the mechanism of action of nicotine in the

23 formation of the smoke habit, the CNS should
24 be selected as the logical site to be
25 studied." Do you see that?
26 ANSWER: Yes.
27 QUESTION: Has Lorillard performed any
28 studies of the central nervous system as it
29 relates to nicotine in tobacco smoke.
30 ANSWER: Only studies are through the
31 Council for Tobacco Research.
32 QUESTION: All right. Do you know if --
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14101

1 are you saying some studies have been done or
2 are you saying --
3 ANSWER: Not by Lorillard per se, no, but
4 by Lorillard support of the Council for
5 Tobacco Research.
6 QUESTION: All right. If you would turn
7 to Page 2. Do you see under the heading
8 "Pharmacokinetic"?
9 ANSWER: I see the heading.
10 QUESTION: All right. If you look at the
11 next sentence, it says, "The amount of
12 nicotine which could be obtained by a smoker
13 smoking a cigarette is dependent on such
14 factors as nicotine content, pH of smoke,
15 puff frequency, puff intensity, puff
16 duration, quantity of smoke inhaled, duration
17 of smoke retention and butt length."
18 Do you see that?
19 ANSWER: I do.
20 QUESTION: The phrase "duration of smoke
21 retention," is that referring to the amount
22 of time the smoke is held in the smoker's
23 mouth?
24 ANSWER: No. I think it's the amount of
25 time that it's held in the respiratory tract
26 and then exhaled.
27 QUESTION: Has Lorillard done any studies
28 of how long or what the normal smoker
29 duration, smoke retention is?
30 ANSWER: I think it's generally accepted
31 it's about two seconds.
32 QUESTION: Are you familiar -- do you
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14102

1 know who Dr. -- Professor Abood is?
2 ANSWER: Yes, I do.
3 QUESTION: Who is he?
4 ANSWER: He is a research -- independent
5 researcher, I've forgotten which university
6 now, who has done work on nicotine.
7 QUESTION: And did Lorillard ever enter
8 into any agreement or consultantship with
9 Professor Abood?
10 ANSWER: No, we did not.
11 QUESTION: Do you know if any other
12 cigarette manufacturers did?
13 ANSWER: I'm not 100 percent sure, but I
14 believe Philip Morris has.
15 QUESTION: Do you know if the results of

16 any of his studies have been published?
17 ANSWER: Yes, I believe they've all been
18 published.
19 QUESTION: Okay. I want to talk to you
20 now about the Tobacco Institute and CTR. Let
21 me ask you first, are you familiar with the
22 Tobacco Institute?
23 ANSWER: I am.
24 QUESTION: And what is your understanding
25 of the Tobacco Institute?
26 ANSWER: The Tobacco Institute was a
27 trade, trade organization that was a lobby
28 for the members particularly in Washington.
29 But it is basically a trade organization.
30 QUESTION: Did you have any involvement
31 with the Tobacco Institute on behalf of
32 Lorillard?

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14103

1 ANSWER: I did when I was CEO. I was a
2 member of the board of the Tobacco Institute
3 when I was CEO of Lorillard.
4 QUESTION: And when you were a member of
5 the board of the Tobacco Institute, what were
6 your duties?
7 ANSWER: There were annual meetings I
8 attended. Various board meetings during the
9 course of the year and/or executive committee
10 meetings at which some of the programs and
11 some of the activities, along with the budget
12 of the institute, were discussed.
13 QUESTION: Do you recall what years you
14 were on the board of TI?
15 ANSWER: I think it was probably '95
16 through '98.
17 QUESTION: Okay. Now, with respect to
18 CTR, what is your understanding of CTR?
19 ANSWER: That it is an independent, or it
20 was an independent organization that made
21 awards to individual investigators for
22 investigation, investigations related to the
23 association between tobacco and certain
24 diseases.
25 QUESTION: All right. Did you -- did you
26 serve on CTR on behalf of Lorillard?
27 ANSWER: I served on what was called the
28 industrial/technical committee back in the
29 1960s, and I have served as a member of the
30 board of directors probably from about --
31 probably 1990 until it -- until it ceased
32 operations.

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14104

1 QUESTION: And when did it cease
2 operations?
3 ANSWER: It has not ceased operations in
4 terms of it still exists, however, it no
5 longer carries out the kind of research
6 activity I referred to. It is simply a shell
7 of an organization that exists for -- in
8 terms of continuing litigation.

9 QUESTION: Did you regularly attend CTR
10 meetings as Lorillard's representative?
11 ANSWER: Only board meetings when I was
12 on the board.
13 QUESTION: Other than the board meetings?
14 ANSWER: No.
15 QUESTION: Other than board meetings,
16 would CTR have regular meetings with
17 representatives from all the manufacturing
18 companies?
19 ANSWER: No.
20 QUESTION: Now, we had talked earlier
21 about the Tobacco Industry Research
22 Committee, TRIC. That's what became CTR,
23 correct?
24 ANSWER: That is correct.
25 QUESTION: Have you ever heard of the ad
26 hoc committee?
27 ANSWER: Yes, I have.
28 QUESTION: And what is the ad hoc
29 committee?
30 ANSWER: I think it was a committee that
31 was formed to review the, the industry
32 research that was being supported.

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14105

1 QUESTION: It consisted of the attorneys
2 from all the manufacturers?
3 ANSWER: I'm not sure I can remember the
4 membership, but, no, I don't think attorneys
5 from all the manufacturers were represented.
6 I think there were -- the committee I'm
7 referring to, there was some legal
8 representation, but not a person from each
9 company.
10 QUESTION: What about the committee of
11 counsel?
12 ANSWER: That would have been the general
13 counsel of the different companies.
14 QUESTION: All right. How about the
15 research liaison committee, have you ever
16 heard of that committee?
17 ANSWER: You're a little confused with
18 the with the committees, but, yes, there was,
19 I guess, a research liaison committee.
20 QUESTION: And do you know what the
21 function of that committee was?
22 ANSWER: And I think its function, again,
23 was to kind of look at the different
24 activities that the industry was supporting.
25 QUESTION: Well, when you say look at the
26 activities --
27 ANSWER: Make recommendations.
28 QUESTION: All right. Would this
29 committee review proposals by people seeking
30 grants from CTR?
31 ANSWER: No, none of these committees did
32 that.

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14106

1 QUESTION: The committee of counsel and

2 ad hoc committee would not review proposals
3 by people seeking grants?
4 ANSWER: Not to my knowledge, except for
5 maybe what was called special projects.
6 QUESTION: All right. We'll get to that
7 in just one second. Let me ask you, the
8 research liaison committee, do you know who
9 it was composed of and, specifically, I'm
10 asking was it composed of CEOs of the
11 companies, was it composed of attorneys, if
12 you know?
13 ANSWER: I think it was a mixture of
14 individuals. Not a full complement from any
15 particular company.
16 QUESTION: Were you aware of any
17 committee known as the policy committee?
18 ANSWER: No, I'm not.
19 QUESTION: Do you know when CTR was first
20 formed?
21 MR. LONG:
22 You mean TIRC?
23 MR. REDFEARN:
24 Well, its predecessor, CTR or its
25 predecessor, TIRC.
26 ANSWER: I think it was the early 1950s.
27 QUESTION: You mentioned special
28 projects. What are special projects?
29 ANSWER: Special projects was a category
30 of projects that were administrated -- where
31 CTR served as an administrator.
32 QUESTION: And when you say
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14107
1 administrator, what do you mean?
2 ANSWER: They sent the money to the
3 institution for which the investigator
4 worked.
5 QUESTION: But the special projects were,
6 in fact, approved and sponsored by attorneys,
7 isn't that correct?
8 ANSWER: I believe that's correct.
9 QUESTION: And were there two different
10 categories? Was there a category of CTR
11 special projects and a category known as
12 non-CTR special projects?
13 ANSWER: Yes, I think that's true.
14 QUESTION: All right. The CTR special
15 projects were funded by CTR, correct?
16 ANSWER: They were a separate budget. It
17 was funds were applied to or sent to outside
18 of the normal CTR budget.
19 QUESTION: Right, and the attorneys
20 actually oversaw the progress of the
21 projects, correct?
22 ANSWER: They may have, but as a part of
23 the administrative function that CTR was
24 playing, they may have been -- visited the
25 investigator, I don't know.
26 QUESTION: All right. Now, non-CTR
27 special projects are special projects which
28 were generated by the attorneys and not
29 funded through CTR, correct?

30 ANSWER: That's correct.
31 QUESTION: And those projects were
32 overseen by the attorneys?
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14108

1 ANSWER: I believe that's correct.
2 QUESTION: And, in fact, the funds for
3 those projects came from an account
4 administered by one of the law firms, isn't
5 that correct?
6 ANSWER: I think that's correct.
7 QUESTION: Did you have any involvement
8 with any CTR special projects?
9 ANSWER: Yes.
10 QUESTION: And what would have been the
11 extent of your involvement?
12 ANSWER: Those that came to Lorillard for
13 consideration of funding came through the
14 general counsel's office, and he always -- or
15 I believe he always or most frequently sent
16 them to me for scientific review.
17 QUESTION: Do you know why they were sent
18 to the general counsel office first?
19 ANSWER: Well, that's just where they
20 came in to Lorillard.
21 QUESTION: All right. What about non-CTR
22 special projects, did you have any
23 involvement in those?
24 ANSWER: I did not.
25 QUESTION: You indicated that CTR stopped
26 doing research sometime around 1997, 1998.
27 Did special projects, CTR special projects,
28 continue up through that time?
29 ANSWER: No, they stopped before that.
30 QUESTION: Do you know when they stopped?
31 ANSWER: I don't know the exact date, but
32 I would say in the late 1980s or mid-1980s.

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New Orleans, Louisiana (504) 525-1753
14109

1 QUESTION: Do you know why they stopped?
2 ANSWER: Other than possible concerns
3 that they would be misconstrued as
4 something -- it being administered by CTR.
5 So I think they were simply moved out at that
6 time.
7 QUESTION: How about non-CTR special
8 projects, did they continue up through 1997
9 and 1998?
10 ANSWER: As far as I know, but I don't
11 know for sure.
12 QUESTION: But don't you know for a fact
13 that Lorillard as a company did participate
14 in certain CTR projects, special projects,
15 and non-CTR special projects solely for
16 litigation purposes?
17 ANSWER: I think we may have, but in
18 terms of non-CTR projects, I don't think that
19 term was ever used.
20 QUESTION: Okay. Let me hand you Exhibit
21 2923.01. Is, is this a document which you
22 authored?

23 ANSWER: I believe so, yes.
24 QUESTION: All right. And you authored
25 it in March, 1972?
26 ANSWER: That's correct.
27 QUESTION: All right. And it refers --
28 it's titled "Thoughts on withdrawing from the
29 Tobacco Working Group." What is the tobacco
30 working group?
31 ANSWER: The tobacco working group was
32 the name given to a committee that functioned
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14110

1 under the National Cancer Institute, and its
2 purpose was stated to conduct activities
3 related to a safer cigarette.
4 QUESTION: All right. And down around
5 the middle it states, "If I were to
6 withdraw..." Can you find that sentence?
7 ANSWER: Yes, I do.
8 QUESTION: "If I were to withdraw,
9 Lorillard would lose considerable insight
10 into the workings of the National Cancer
11 Institute program with respect to
12 cigarettes." The program referred to here as
13 the safer cigarette program you just --
14 ANSWER: Yes, the tobacco working group,
15 safer cigarette program.
16 QUESTION: Did you ultimately withdraw?
17 ANSWER: No, I did not.
18 QUESTION: And down a little bit further,
19 about three sentences, it says, "we cannot,
20 however.." See where I am?
21 ANSWER: Yes.
22 QUESTION: It says, "We cannot, however,
23 through my participation in this group,
24 expect to divert the main objective of the
25 program." What was the main objective of the
26 program?
27 ANSWER: Was to find a safer cigarette.
28 QUESTION: Let me hand you Scott Exhibit
29 2825. Are you familiar with this --
30 ANSWER: I am.
31 QUESTION: -- document. In fact, this is
32 a memo that you prepared in June of 1974,
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14111

1 correct?
2 ANSWER: That's correct.
3 QUESTION: Now, you addressed it to C. H.
4 Judge. Who was Mr. Judge at that time?
5 ANSWER: He was the president of
6 Lorillard.
7 QUESTION: I want to direct your
8 attention down to Paragraph 6 first, and it
9 refers to the German Tobacco Institute.
10 ANSWER: Yes.
11 QUESTION: What is -- what was the German
12 Tobacco Institute?
13 ANSWER: It was an activity that was
14 primarily at one of the universities where
15 they were developing a large-scale inhalation

16 bioassay using hamsters.
17 And it also had a relation with the
18 German government in terms of cooperative
19 effort to reduce the toxicity of cigarettes.
20 QUESTION: Was this the German equivalent
21 to the United States Tobacco Institute or was
22 it completely different?
23 ANSWER: No, I think it was very
24 different.
25 QUESTION: All right. This memo refers
26 to certain research activity being conducted
27 by the German Tobacco Institute, correct?
28 ANSWER: Yes, it does.
29 QUESTION: Was this research ever
30 published, to your knowledge?
31 ANSWER: Some of it, yes.
32 QUESTION: It says, "Work is highly
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14112

1 product oriented." What do you mean by that?
2 ANSWER: That they were working on
3 developing products.
4 QUESTION: Cigarette products, I presume?
5 ANSWER: I presume, yes.
6 QUESTION: If you would turn to Page 2.
7 Under Paragraph 13, it states, "Ad Hoc
8 Committee."
9 ANSWER: Yes.
10 QUESTION: What ad hoc committee were you
11 referring to here?
12 ANSWER: I don't know.
13 QUESTION: Is that the ad hoc committee
14 associated with CTR which we discussed
15 earlier?
16 ANSWER: I'm unsure as to what was meant
17 by the ad hoc committee in this context.
18 QUESTION: All right. Well, underneath
19 it it states that "Most research is
20 epidemiological in nature. The program is
21 primarily aimed at seeking alternate
22 hypothesis of disease causation."
23 Was the purpose of seeking the
24 alternative hypothesis of disease causation
25 for litigation purposes?
26 ANSWER: It could have been, yes.
27 QUESTION: And now can I ask you to turn
28 to page 3. Are you there?
29 ANSWER: Yes.
30 QUESTION: The very last paragraph states
31 that, "Historically, the joint industry
32 funded smoking and health research programs
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14113

1 have not been selected against specific
2 scientific goals, but rather for various
3 purposes such as public relations, political
4 relations, position for litigation, etc.
5 Thus, it seems obvious that reviews of such
6 programs for scientific relevance and merit
7 in the smoking and health field are not
8 likely to produce high ratings."

9 Doesn't this indicate, as I asked you
10 earlier, that, in fact, CTR programs, or
11 projects, were being approved not necessarily
12 for scientific merit, but for litigation or
13 public relations purposes?

14 ANSWER: No, it doesn't pertain to CTR,
15 the last paragraph. It's general about the
16 whole list of things that are here in the
17 earlier parts of the memo.

18 QUESTION: All right. So, let me go
19 back, then, so we're clear. You're saying
20 the last paragraph, a portion of which I just
21 read, refers to the industry in general, not
22 simply CTR?

23 ANSWER: And it also includes the
24 government and the USDA and NCI, the
25 University of Kentucky, all of those that I
26 have listed.

27 What I'm really saying is that the
28 monies that are being expended here are not
29 well coordinated. I believe it's time that I
30 felt there was some duplication of effort.
31 There could have been -- could have gotten
32 more research done for the dollars, and the

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14114

1 programs would have benefited from perhaps a
2 better focus on the specific areas that were
3 being investigated.

4 One of the long running problems is we
5 never had very much activity through these
6 organizations relating to cardiovascular
7 disease. It was heavily aimed at cancer.
8 These are the kind of things I'm saying in
9 this memo.

10 QUESTION: Well, let me ask you to turn
11 to Page 4. And -- are you there?

12 ANSWER: Yes.

13 QUESTION: Third paragraph. "In the
14 past, and currently, the Committee approach
15 is in effect being used (Committee of
16 Council). However, representatives of the
17 committee generally lack the background to
18 bring about scientific coordination and the
19 time to bring about management coordination."

20 The Committee of Council referring to,
21 is that the committee of attorneys from the
22 various tobacco manufacturers?

23 ANSWER: That would have been the case,
24 yes.

25 QUESTION: All right. And what you're
26 saying in this paragraph is that the
27 attorneys lack scientific background to be
28 able to judge the scientific merit of
29 programs?

30 ANSWER: Yes, relative to scientists.

31 QUESTION: Let me hand you Exhibit

32 2879.01. Have you ever seen this document

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14115

1 before?

2 ANSWER: I don't think so.
3 QUESTION: Do you recognize this
4 handwriting as Curtis Judge's handwriting?
5 ANSWER: It appears to be.
6 QUESTION: If you would turn to the first
7 page where the handwriting appears. The very
8 top it states, "To determine the industry's
9 short and long-term scientific research
10 objectives as they apply to: (No implied
11 priority) Legislative and regulatory,
12 scientific knowledge, public relations,
13 litigation." Do you see that area?
14 ANSWER: I do.
15 QUESTION: Did you ever discuss these
16 issues with Curtis Judge?
17 ANSWER: Only in the context that they're
18 the same issues as was in the memo we looked
19 at a moment ago that I had written.
20 (Videotape suspended; in open court:)
21 MR. REDFEARN:
22 Judge, there's only a few more minutes
23 left. I'm not sure what's happening.
24 Your Honor, they've asked for one
25 second.
26 Your Honor --
27 (Whereupon, a sidebar conference is held
28 as follows:)
29 MR. REDFEARN:
30 Due to unknown technical problems, I'm
31 just going to suggest we just stop at this
32 point. There's only about five or ten

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14116

1 minutes left, in any event, but they just
2 don't know what's going on.
3 MR. COPLEY:
4 There's almost exactly five pages left.
5 I don't have any objection to stopping it
6 now.
7 THE COURT:
8 Okay.
9 (End of sidebar.)
10 THE COURT:
11 Due to technical difficulties, the movie
12 has ended for today.
13 We're going to recess at this time for
14 today. Tomorrow morning, 9:30, sharp. See
15 you then. Thank you.
16 (Jury excused.)
17 THE COURT:
18 Let the record reflect the jury has left
19 the courtroom.
20 Anything for the record by plaintiff's
21 Counsel as a result of today's proceedings?
22 MR. RUSS HERMAN:
23 Yes, Your Honor. At the last break, we
24 were served by Mr. Williams with a letter and
25 an attachment on the dollars issue, and we
26 will have a detailed reply in the morning.
27 THE COURT:
28 Thank you.
29 Anything else?

30 Defense Counsel, anything?
31 MR. WITTMANN:
32 No, Your Honor.
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14117

1 THE COURT:
2 A couple of matters I wanted to take up.
3 The first one has to do with plaintiff
4 Exhibit 4048.01, and I get a memorandum from
5 Brown & Williamson today telling me that --
6 they just found out it's their document and a
7 privilege request. The protocol for the
8 privilege rulings is set out in the Case
9 Management Orders and since that document is
10 not listed as a reliance document as to Jack
11 Henningfield's testimony, I suspect or I
12 believe that the appropriate way to address
13 those concerns is through the protocol set up
14 and that Mr. Gianna is going to have a
15 hearing on it. When and where remains to be
16 determined. That's how we're going to handle
17 Exhibit 4048.01 and the claims of privilege
18 on that document as by Brown & Williamson.

19 MR. RUSS HERMAN:
20 Your Honor, in fairness to the record
21 and opposing counsel and the Court, we
22 understand why this was not previously
23 objected to and certainly don't have any
24 objection to them -- to Brown & Williamson
25 currently at this moment urging privilege.
26 This document was found in the Philip Morris
27 files and, as a result, identified with
28 Philip Morris rather than with Brown &
29 Williamson.

30 THE COURT:
31 When do you expect to try to use that
32 document, Mr. Herman?
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14118

1 MR. RUSS HERMAN:
2 After -- at some time during the trial
3 after Your Honor has ruled.

4 THE COURT:
5 All right.

6 MR. SCHNEIDER:
7 We appreciate that.

8 MR. RUSS HERMAN:
9 You're quite welcome.

10 THE COURT:
11 On the trial exhibits for the
12 Henningfield live testimony --

13 MR. RUSS HERMAN:
14 Yes, Your Honor.

15 THE COURT:
16 -- I have what I've been told is the
17 last list of those exhibits.

18 MR. RUSS HERMAN:
19 Yes, Your Honor.

20 THE COURT:
21 And I note that, and you may want to
22 take some notes about this unless you have

23 these objections noted on your copy --
24 MR. RUSS HERMAN:
25 Mr. Gertler is going to handle this
26 issue for us.
27 THE COURT:
28 Okay, Mr. Gertler. Are you ready to
29 proceed?
30 MR. LOUIS GERTLER:
31 Yes.
32 THE COURT:
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14119

1 Have you this list Mr. Herman presented
2 to me?
3 MR. LOUIS GERTLER:
4 Yes.
5 THE COURT:
6 All right. Look at 1718.01.
7 MR. LOUIS GERTLER:
8 Actually, I don't have a copy with me.
9 THE COURT:
10 Of that list?
11 MS. DeSUE:
12 Here it is.
13 MR. LOUIS GERTLER:
14 Yes.
15 THE COURT:
16 These comments have to do with all of
17 the exhibits listed on that first page, the
18 defense response is that none of those four,
19 1718.01, 1719, 1722.01 and 2820 are on Dr.
20 Henningfield's reliance list. The same
21 has -- comments are made by the three
22 exhibits listed on the second page, 1976.01,
23 2011, 2139. On the third page, comments are
24 made as to Exhibits 2882, 2205. And on the
25 last page, those comments are made with
26 regard to Exhibit 2460 and 2467.
27 So, the first thing I want you to do is
28 point out to me in Dr. Henningfield's report
29 where those documents are listed on his
30 reliance list and maybe you better tell me
31 where the reliance lists are in this report
32 because I have had trouble identifying it.

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14120

1 MR. LOUIS GERTLER:
2 Well --
3 THE COURT:
4 I see a page numbered 9, which has some
5 documents on it, apparently, most of which
6 were written by Dr. Henningfield, and then I
7 have a page toward the back of that document
8 that are -- that is titled "Dr.
9 Henningfield's References." And I don't see
10 any other reliance list attached to Dr.
11 Henningfield's report.
12 MR. LOUIS GERTLER:
13 You have the entirety of the expert
14 report, Your Honor. If you look at Page 8 of
15 the report, he states point-blank that "I

16 rely on," and he lists several things he
17 relies on, and you'll see Number 3 on that
18 list on Page 9 is tobacco industry documents
19 which are now publicly available.
20 THE COURT:
21 That's not specific enough. That's not
22 a reliance list. That's a general reference.
23 MR. LOUIS GERTLER:
24 Well --
25 THE COURT:
26 That's how many thousand? 60, 80,
27 100,000?
28 MR. LOUIS GERTLER:
29 Except let me point this out, Your
30 Honor, very importantly, the defendants never
31 took Dr. Henningfield's deposition. They had
32 two and a half years to ask Dr. --

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14121

1 THE COURT:
2 What does that have to do with the trial
3 orders and the Case Management Orders which
4 requires a list of documents relied on by the
5 expert in his expert report? This is a
6 general reference to tobacco industry
7 documents which are now publicly available.
8 Tell me how many you think that refers to?
9 MR. LOUIS GERTLER:
10 Well, it refers to a lot because he
11 relies on literally thousands of tobacco
12 industry documents to support his opinions on
13 light cigarettes, nicotine, addiction, et
14 cetera.
15 THE COURT:
16 I don't think that's a reliance list.
17 MR. LOUIS GERTLER:
18 Look at the end of his reference list,
19 Your Honor.
20 THE COURT:
21 Where is that?
22 MR. LOUIS GERTLER:
23 Attached to the back.
24 THE COURT:
25 Yes, and that's another generalization,
26 any documents previously offered in
27 deposition testimony and/or trials including
28 state of Washington. How many documents is
29 that?
30 MR. LOUIS GERTLER:
31 It's a lot of documents, Your Honor.
32 They had an opportunity to depose Dr.

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14122

1 Henningfield and ask him, Doctor, in your
2 report, you state you rely on tobacco
3 industry documents. Where are they?
4 THE COURT:
5 Is the deposition of the witness a
6 condition precedent for giving him a list of
7 documents he relied on? I think not.
8 MR. LOUIS GERTLER:

9 I didn't realize the CMO 2 requires
10 every document he relies on to be disclosed
11 in his report.
12 THE COURT:
13 That's new.
14 MR. LOUIS GERTLER:
15 I could be wrong in my understanding. I
16 could be wrong, but I don't think I am. I
17 don't think the defense coming in the day
18 before Dr. Henningfield testifies and
19 claiming prejudice because they didn't know
20 when they had two and a half years to ask
21 them about it.
22 THE COURT:
23 Start from the top again. Where is the
24 reliance list in Dr. Henningfield's expert
25 report? As I understand it, you refer to the
26 bottom of Page 8 and the top of Page 9,
27 correct?
28 MR. LOUIS GERTLER:
29 Yes, and also the reference list.
30 THE COURT:
31 And you refer to the last statement on
32 the second page entitled "Dr. Henningfield's
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14123

1 References," the last paragraph, correct?
2 MR. LOUIS GERTLER:
3 Yes.
4 THE COURT:
5 Anything else?
6 MR. LOUIS GERTLER:
7 His entire list of references. Also, he
8 refers to two documents in his report, a
9 Teague document and a Dunn document from
10 Philip Morris.
11 THE COURT:
12 I'm not sure that complies with the
13 trial order.
14 Mr. Gianna, give me that thing that you
15 made available to me.
16 Expert witness identification and
17 discovery. The reports shall include, (ii),
18 the data or the information considered by the
19 witness in forming his opinions, any exhibits
20 to be used as the summary or in support of
21 the opinions.
22 That refers to a list.
23 MR. LOUIS GERTLER:
24 It obviously wasn't clear at the time
25 that this report was prepared. We thought
26 that listing publicly available tobacco
27 documents was sufficient for CMO 2. .
28 Certainly, if the defendants thought it
29 wasn't sufficient, they had two and a half
30 years to remedy it. They didn't do it. Now
31 we're going to be penalized?

32 THE COURT:
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14124

1 You're trying to shift the focus. My

2 request to you was to point out to me in this
3 expert report the compliance of that trial
4 order or that Case Management Order for a
5 list of the exhibits upon which he will rely.
6 I don't find it. I find vague --

7 MR. LOUIS GERTLER:
8 It's not there.

9 THE COURT:
10 -- general references which could
11 include thousands of documents. I don't
12 think it's the defendants' responsibility to
13 say, okay, Dr. Henningfield, you're supposed
14 to have this list of documents. What are the
15 documents? I don't know that they have that
16 responsibility under this trial order, and
17 I'm disturbed that you would take the
18 position that those general references are
19 sufficient and then the fall-back position
20 that it's their obligation to ask the
21 question if you haven't complied with the
22 trial order. I'm very dismayed about that.

23 On the demonstratives, I'll hear the
24 arguments, but I've looked at them, and let's
25 start from the back.

26 MR. BELASIC:
27 I'm prepared to submit them on the
28 record, Your Honor. I don't know about the
29 other defendants.

30 THE COURT:
31 I don't find any valid objections to the
32 demos.

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14125

1 MR. BELASIC:
2 So be it.

3 THE COURT:
4 You didn't say anything specific about
5 the two empty bottles. I don't know what
6 you're going to say about that and we don't
7 know what he's going to do with them.

8 MR. BELASIC:
9 That's right.

10 THE COURT:
11 But all the cigarette packages are in
12 evidence, and I don't know what you said
13 about the automobiles, but I guess we'll deal
14 with that when it comes up.

15 MR. BELASIC:
16 I didn't object to the automobiles.

17 THE COURT:
18 Okay. Mr. Gertler, anything more for
19 the record?

20 MR. LOUIS GERTLER:
21 No, sir.

22 THE COURT:
23 Okay. I'll rule on it in the morning,
24 but I don't see that I have much discretion.
25 I made the rules and I've always found that
26 it leads to disaster when I violate my own
27 rules.

28 We'll convene at 9:30.
29 MR. BELASIC:

30 Your Honor, I have three quick
31 suggestions and requests of Your Honor and
32 opposing counsel which might speed the trial
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14126

1 up, at least the objection process. Might
2 take me a couple minutes.

3 THE COURT:

4 Do you want to refer to his possible
5 discussion about FDA regulation?

6 MR. BELASIC:

7 That's one. Could we instruct
8 plaintiffs' counsel to follow Your Honor's
9 order of March 27th?

10 THE COURT:

11 Yes.

12 MR. LOUIS GERTLER:

13 One caveat. If on cross-examination an
14 issue is brought up and there are several
15 issues in which an answer needs to refer to
16 the FDA or its regulation, we reserve the
17 right to raise a objection to that at that
18 time and ask --

19 MR. RUSS HERMAN:

20 Wait a minute.

21 THE COURT:

22 Counsel, have I not issued orders on
23 Motions in Limine that deal exactly with
24 that?

25 MR. RUSS HERMAN:

26 No, you haven't, Your Honor.

27 MR. BRUNO:

28 No.

29 THE COURT:

30 I haven't.

31 MR. RUSS HERMAN:

32 You have not. We'd like to argue it.

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14127

1 There were limited rulings as to two
2 documents.

3 THE COURT:

4 Okay.

5 MR. RUSS HERMAN:

6 There was no general ruling and -- step
7 up here and argue it.

8 MR. STEPHEN HERMAN:

9 Okay.

10 THE COURT:

11 Mr. Belasic, I took the initiative away
12 from you.

13 MR. BELASIC:

14 I'm getting hornswoggled here.

15 THE COURT:

16 The FDA rulings upon which you filed the
17 memorandum and as -- what other two issues?

18 MR. BELASIC:

19 This is our fifth witness in five weeks.
20 Obviously, we're moving really slow. This
21 guy is going to be extremely cumulative of
22 the other witnesses. I don't want to run up

23 there, upset the jury, upset Your Honor,
24 upset lawyers. I'd like to be able to make a
25 cumulative objection without having to go to
26 sidebar, and I'd like to say something like
27 this for the record, just objection,
28 cumulative, this topic covered by Witness A
29 or Witness B. I think that states the basis
30 so you can make the appropriate ruling, but
31 we don't have to waste everybody's time.

32 THE COURT:

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14128

1 All right. Anything else?

2 MR. BELASIC:

3 And the third is, and I understand there
4 was some reference to it today by Mr. Gay,
5 but a few weeks ago, Mr. Herman had what I
6 thought was a good idea, he -- and he can
7 correct me if I'm wrong -- suggested that
8 plaintiffs would be willing to stipulate that
9 the pretrial objections, both the written
10 objections to exhibits that Your Honor
11 required, and the objections that we made at
12 the depo hearings that Your Honor required
13 would be preserved so we wouldn't have to
14 fear waiver at trial. I feel stupid when I
15 have to say "Preserve my prior objections" to
16 a document that's already been admitted. I
17 don't know what the jury thinks of it.
18 Probably doesn't help us. But if we could
19 have that stipulation so it could be clear,
20 because I would be loathe to run the risk of
21 waiver, I don't think it will eliminate
22 objections, but it would make things go
23 faster.

24 MR. RUSS HERMAN:

25 I would like to reply to that. We can't
26 make a blanket stipulation because there's
27 the law of the case on some of these
28 evidentiary issues that they've neither
29 writted nor appealed. But once Your Honor
30 has ruled, he's ruled. What we object to is
31 the same objections being lodged over and
32 over and over again.

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14129

1 THE COURT:

2 Let me say this. I believe that once an
3 objection has been made and ruled upon and it
4 has become final because it hasn't been
5 appealed, it's not necessary to make another
6 identical objection to preserve it. I
7 believe it's preserved. If you want to make
8 that request of me, I'll issue that ruling
9 and I just have.

10 MR. BELASIC:

11 Thank you.

12 THE COURT:

13 You can make a blanket objection to
14 cumulative testimony and just mark it in the
15 record while the testimony is going on if you

16 think that would be more palatable to the
17 jury.
18 MR. BELASIC:
19 Thank you again.
20 MR. RUSS HERMAN:
21 Your Honor, I don't know how this
22 testimony could be cumulative when it's never
23 been given, and the suggestion,
24 presuggestion, that its cumulative is made
25 purely for the purpose of prejudice and has
26 nothing to do with any issue raised before
27 motion.
28 THE COURT:
29 I can't stop him from making an
30 objection. If he wants to shorthand the
31 objection, I'll let him say "cumulative"
32 means that it's cumulative of other testimony
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14130

1 by other experts that have already been
2 heard, and that can be understood and made
3 continuing.
4 MR. RUSS HERMAN:
5 Understood. Our request is that if
6 there's an objection as to something being
7 cumulative it not be made as a speaking
8 objection, that it be made once at the bench
9 and then it could be made continuing rather
10 than in the presence of the jury.
11 THE COURT:
12 I'll let both sides try to agree on that
13 overnight. Okay? Think about it.
14 Mr. Herman, you wanted to talk about the
15 FDA regulation issue, I believe?
16 MR. STEPHEN HERMAN:
17 Very briefly, Your Honor.
18 THE COURT:
19 Stephen Herman, yes.
20 MR. STEPHEN HERMAN:
21 This came up last week, and if you look
22 at the list of orders issued, there was a
23 Motion in Limine granted on, quote, the FDA's
24 efforts to regulate nicotine. We pointed
25 out, I think, very briefly, that that doesn't
26 cover all historical perceptions and
27 implications about the FDA's authority, what
28 the FDA might do, et cetera. It was a very
29 limited -- and now we've dug up the actual
30 motion that was filed by the defendants, a
31 specific effort by Commissioner Kessler,
32 beginning in 1994, to assert jurisdiction
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14131

1 over nicotine in cigarettes which was
2 ultimately rejected by the U.S. Supreme
3 Court, and if you look at their original
4 motion, it -- they have two exhibits which
5 they claim to be hearsay and statements by
6 Commissioner Kessler, which are a 1995 report
7 and a 1996 report of the FDA, but as Mr. Gay
8 argued when Dr. DeNoble was on the stand, the

9 fact that a device may have to be regulated
10 by the FDA or the fact that the defendants
11 were concerned about FDA regulation or the
12 existence of the FDA with all of its
13 implications for the last 50 years over the
14 cigarette industry is not, we don't believe,
15 fairly eliminated because it's very relevant
16 and there's nothing improper about it.

17 We're not going to admit these two
18 documents. Your Honor has clearly ruled on
19 that. And we believe and agree that the
20 ruling applies to the effort beginning in
21 1994 to regulate nicotine by Commissioner
22 Kessler and the FDA, but --

23 THE COURT:

24 Will you get those -- the motion -- the
25 ruling to me for in the morning? I don't
26 need your only copy, if you'll get copies
27 available to me first thing in the morning,
28 I'll have a chance to review them, and if you
29 want to couch it as a reply to this pleading,
30 memorandum regarding the testimony of Jack
31 Henningfield and FDA efforts to regulate
32 nicotine, you can couch it that way and I'll

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14132

1 deliver it in the morning.

2 MR. BELASIC:

3 I think we can resolve it because I
4 agree with everything Steve just said. I can
5 give you a copy of the reasons for judgment.
6 I think Mr. Herman's right. It's the mid-
7 '90s effort to regulate nicotine. Other
8 stuff is not precluded.

9 THE COURT:

10 I understand that the schedule is Dr.
11 Henningfield will start at about 9:30
12 tomorrow morning, but that he will not be
13 here until 10:30 or so on Thursday?

14 MR. RUSS HERMAN:

15 That's correct, Your Honor.

16 THE COURT:

17 That will be the schedule. We'll fill
18 that hour with some documents or something.
19 Anything else?

20 MR. RUSS HERMAN:

21 No, Your Honor.

22 THE COURT:

23 We'll recess until 9:30 in the morning.

24 (Whereupon, the proceedings were
25 adjourned at 3:55 p.m.)
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14133

1 REPORTER'S CERTIFICATE

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I, CAROL VALLETTE SLATER, Certified Court Reporter, Registered Professional Reporter, do hereby certify that the foregoing proceedings were reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

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